

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM WASHINGTON,

Plaintiff,

V.

WASHINGTON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

CASE NO. 3:17-cv-5728 RJB-TLF

ORDER DENYING MOTION FOR
COUNSEL AND EXPANDED
DISCOVERY

Before the Court is Plaintiff William Washington's motion for the appointment of

counsel and motion for expanded discovery. Dkt. 25. The undersigned separately recommended that the Court deny Mr. Washington's request for a temporary restraining order, which he made in the same motion. *See id.* Mr. Washington asserts that he requires appointment of counsel because the inmate assisting him with his lawsuit will be unavailable to help him in the future and he does not have the training and education to handle the medical issues in this case. *Id.* He also asks that the Court expand the discovery limits provided under Federal Rule of Civil Procedure (FRCP) 33. *Id.*

DISCUSSION

There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.

3 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party
4 proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v.*
5 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th
6 Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional
7 circumstances requires an evaluation of both the likelihood of success on the merits and the
8 ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues
9 involved. *Wilborn*, 789 F.2d at 1331. Neither of these factors is dispositive and both must be
10 viewed together before reaching a decision on request of counsel under Section 1915(d). *Id.*

11 Plaintiff has thus far demonstrated an adequate ability to articulate his claims *pro se* and
12 has not demonstrated that the issues involved in this case are complex. Plaintiff's incarceration
13 and limited legal training are not exceptional factors constituting exceptional circumstances that
14 warrant the appointment of counsel. Rather, they are the type of difficulties encountered by many
15 pro se litigants. Plaintiff's hypothetical lack of access to the "jailhouse lawyer" who has been
16 assisting him does not substitute for a showing that Plaintiff is unable to articulate his claims or
17 that the case is exceptionally complex.

18 Plaintiff also has not shown a likelihood of success on the merits. *See Wilborn*, 789 F.2d
19 at 1331. Plaintiff points to cases that he contends are factually similar, in which federal courts
20 have awarded relief to plaintiffs with hepatitis C. Dkt. 25, pp. 2-3. Those cases, like this one, are
21 highly fact specific and their outcomes depended not only on the plaintiffs' medical conditions
22 but on the actions and state of mind of the defendants. *See generally B.E. v. Teeter*, No. C16-
23 227-JCC, 2016 U.S. Dist. LEXIS 70021 (W.D. Wash. May 27, 2016); *Abu-Jamal v. Wetzel*, No.

1 3:16-CV-2000, 2017 U.S. Dist. LEXIS 368 (M.D. Pa. Jan. 3, 2017). As the undersigned
2 indicated in recommending that the Court deny Mr. Washington's motion for a temporary
3 restraining order, the record to this point does not support Plaintiff's contention that defendants
4 have acted with deliberate indifference.

5 Finally, Plaintiff's request that the Court alter the discovery rules for interrogatories
6 under FRCP 33 is premature, as the case has not proceeded to discovery yet.

7 Accordingly, it is **ORDERED**:

8 (1) Plaintiff's motion for the appointment of counsel (Dkt. 25) is **DENIED**.
9 (2) Plaintiff's motion to expand discovery at this stage (Dkt. 25) is **DENIED**.
10 (2) The Clerk of Court is directed to send a copy of this Order to plaintiff and to
11 counsel for defendants.

12 Dated this 22nd day of December, 2017.

13
14 
15

16 Theresa L. Fricke
17 United States Magistrate Judge
18
19
20
21
22
23